Exhibit 5

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

- - -

IN RE: ETHICON, INC.	:	Master File No.
PELVIC REPAIR SYSTEM,	:	2:12-MD-02327
PRODUCTS LIABILITY	:	MDL NO. 2327
LITIGATION	:	

- - -

AND VARIOUS OTHER CROSS-NOTICED ACTIONS
THIS DOCUMENT RELATES TO ALL CASES

- - -

June 4, 2013
VOLUME III

- - -

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Continued Videotaped 30(b)(6) deposition of DANIEL J. SMITH taken pursuant to notice, was held at the law offices of Riker Danzig Scherer Hyland & Perretti LLP, Headquarters Plaza, One Speedwell Avenue, Morristown, New Jersey, beginning at 9:48 a.m., on the above date, before Ann Marie Mitchell, a Federally Approved Certified Realtime Reporter, Registered Diplomate Reporter and Notary Public for the State of New Jersey.

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it says "Acceptable risk." Do you see that?

A. Yes.

Q. So that means that that would be an acceptable risk and that there would be no further follow-up. Correct?

A. It means that for that RPN, it would be low enough that we wouldn't say change the device or that the procedure had to be passed in that particular location, and it was acceptable, you know. Yeah, acceptable risk.

Q. If you go to page 523, one other entry I want to ask you about. Number 10, next to that --

A. One second, one second.

Number 10?

Q. Next to that, it says, under the "Failure mode," it says, "Particles from Prolene mesh fall...into the tissue." Do you see that?

A. Yes.

Q. That was essentially --

Before the laser cut mesh, that was one of the problems that was occurring with the mesh; is that right?

A. It could be considered a problem, but it wasn't a -- necessarily a very high risk problem.

Q. Well, under "Effect," it says, "No effect. Implantable material." Do you see that?

A. Yes.

Q. As a corporate designee who has looked at the design history files in preparation for this deposition, do you know whether or not Ethicon or Johnson & Johnson has ever done any studies specifically to determine whether those particles that would fall into the tissue had any clinical effect on a patient?

A. It's outside of my purview, but this is Prolene, which is a suture material used in cardiovascular surgery implanted in the body all the time, so I would say that from a suture perspective, it was studied.

Q. But we're not talking about sutures, we're talking about particles falling off the mesh tape in this case. Correct?

A. We're talking about Prolene fiber material, which is the same fiber material used in sutures.

Q. But my question is a little different.

Do you know as you sit here today whether or not Ethicon or Johnson & Johnson did any

tests specifically to determine whether those particles falling into the tissue when they fell off the mesh during operations could cause any clinical problems for a patient, yes or no?

MR. HUTCHINSON: I'm going to object to the extent that question exceeds the scope of the 30(b)(6) notice.

THE WITNESS: From my understanding, since the entire mesh is made of Prolene and implanted --

MR. CARTMELL: Okay. I'm going to object and move to strike.

MR. HUTCHINSON: No, no, Tom.

MR. CARTMELL: Yeah, we don't --

MR. HUTCHINSON: No.

MR. CARTMELL: We're not going to go on and --

MR. HUTCHINSON: Listen to me.

MR. CARTMELL: No, I'm not listening to you.

MR. HUTCHINSON: Well, then shut up and listen. The witness is entitled to continue answering your question and then you can reask the question.

MR. CARTMELL: But if my question had

been is Prolene going to cause a problem for a patient, then that would be an answer to my question. My question was, did the -- has the company ever done any studies. That's my only question. I know he wants to give your response, but my --

MR. HUTCHINSON: It's not my response, it's his response.

MR. CARTMELL: -- question is very specific. Okay?

MR. HUTCHINSON: Okay.

MR. CARTMELL: And all I'm asking -- my specific question --

MR. HUTCHINSON: I'll go.

The witness will answer the question that you asked and then you can ask a follow-up question.

Dan, you can finish answering the question.

BY MR. CARTMELL:

Q. Let me restate the question.

As you sit here today as the corporate designee and having reviewed the files, the design history files, in preparation for this deposition, has Ethicon or Johnson & Johnson

performed any studies to determine whether or not the particles that fall off or did fall off the mesh TVT device caused any problems or issues from a clinical standpoint to patients, yes or no?

MR. HUTCHINSON: I'm going to object to the extent that question exceeds this person's designation for the 30(b)(6) topics.

THE WITNESS: I have not seen in my review of the documents here that that study was in here.

BY MR. CARTMELL:

Q. Let me ask you a few questions about the instructions for use or the label for the TVT device.

When the TVT was first sold in the United States, who was it that actually developed and approved the label for the device?

A. Well, since it was before my time, but I can tell you that there's a labeling procedure and a copy review that I'm sure has been in place as it is today for all labeling, which would include the package label as well as the IFU.

Q. And it's your understanding from your review of the design history files that the label that was first in use in 1998 when the product was

you see that?

A. Yes, I believe I do.

Q. To the design history file, and then it has several 0s and a 176.

And that is actually the design history file for the laser cut mesh design history file. Right?

A. I'd have to look at it to confirm it, but if you say it is.

Q. Well, you looked at that in preparation for your depo. Right?

A. Yes, but I don't remember numbers.

Q. Fair enough. I'll represent to you that it was.

And we haven't talked much about the laser cut mesh change, but what was that specifically? In other words, why was the TVT product changed to have a laser cut mesh?

A. I believe in one of the earlier deposition days we spoke that the particle loss that we had was being presented by our competition as being a problem, although it wasn't necessarily a problem. So we created a laser cut mesh to minimize it, you know, but we never took off the mechanically cut mesh because it doesn't represent a problem

other than from a marketing perspective.

Q. So I've seen references in the documents to fraying mesh.

Is that the -- when the mesh frays and particles fall off?

A. It's been called many things, but yes.

Q. And so there was a series of complaints or there have been a series of complaints over the years with the TVT device that the mesh would fray and that particles could fall off the mesh and into the patient's body. Correct?

A. That's correct.

Q. And some doctors sent complaints to the company saying, you know, we don't like the fact that this -- these particles are falling into our patients, and voice of customer was they told you they would like to see a mesh that didn't do that. Correct?

A. And as a due diligence, we pursued it to create a laser cut mesh.

Q. And as you said, that happened in 2006, or at least that's to the best of your memory?

A. Somewhere in that ballpark.

Q. That would be consistent with this